

## REMARKS

In the Office Action dated February 8, 2007, claims 1-12, 14-16, and 18-22 were presented for examination. Claims 1-2 and 4-9 were rejected under 35 U.S.C. §102(e) as being anticipated by *Pickett et al.*, U.S. Patent No. 6,498,791. Claims 12, 15, 16, 18, and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Pickett et al.*, U.S. Patent No. 6,498,791, in view of the rejection of claim 1. Claims 3, 11, 21, and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Pickett et al.*, U.S. Patent No. 6,498,791, in view of *Frye*, U.S. Patent Publication No. 2003/0097553. Claims 10, 14, and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Pickett et al.*, U.S. Patent No. 6,498,791 in view of *Zaudtke et al.*, U.S. Patent No. 6,654,816.

The following remarks are provided in support of the pending claims and responsive to the Office Action of February 8, 2007 for the pending application.

### **I. Rejection of Claims 1-2 and 4-9**

In the Office Action dated February 8, 2007, the Examiner assigned to the application rejected claims 1-2 and 4-9 under 35 U.S.C. §102(e) as being anticipated by *Pickett et al.* '791.

Applicant's remarks to *Pickett et al.* '791 in the prior Office Action response(s) is hereby incorporated by reference.

In the Office Action dated February 8, 2007, the Examiner cites the Abstract portion of *Pickett et al.* and Col. 3. In reviewing these two specific locations, it is clear that the Examiner is searching for support that the multiplexer of *Pickett et al.* provides support and maintenance actions, as claimed by Applicant. However, that is not the case. Although the Abstract states, ". . . voice and data transmissions to be intelligently managed and controlled with a single integrated system." There is no explicit or inherent teaching that such management is provided by the switch or multiplexer, as alleged by the Examiner. More specifically, there is no explicit teaching in *Pickett et al.* that a service processor, or an equivalent tool, is taught therein to

provide maintenance and support. Furthermore, in line 12 of Col. 3, it is indicated that traffic is intelligently mapped. Again, there is no explicit or inherent teaching that the intelligent mapping is produced by a service processor, or that intelligent mapping is equivalent to maintenance and support. For example, the buffer/framer 72 is taught by *Pickett et al.* “to transfer raw or protocol-processed data, which may be mapped to particular slots of TDM bus 78 and made available on different ports.” Col. 8, lines 53-56. To map is “to make logical connections between two entities.”<sup>1</sup> “The term map is often used to describe programming languages”<sup>2</sup> Applicant does not claim that their service processor is mapping data. Rather, Applicant is claiming that their service processor provides maintenance and support. The tasks claimed by Applicant are not equivalent to tasks performed by a multiplexer or the tasks of *Pickett et al.*

Accordingly, Applicant respectfully requests removal of the rejection and direct allowance of claims 1, 2, and 4-9.

## **II. Rejection of Claims 12, 15, 16, 18, and 19**

In the Office Action dated February 8, 2007, the Examiner assigned to the application rejected claims 12, 15, 16, 18, and 19 under 35 U.S.C. §103(a) as being unpatentable over *Pickett et al.* ‘791 in view of the rejection of claim 1.

Applicant’s remarks to *Pickett et al.* ‘791 made above are hereby incorporated by reference.

Independent claims 12 and 16 include limitations pertaining to a multiplexer and a service processor as two separate elements. The multiplexer is an instrument for routing communication and the service processor is an instrument for provision of management commands. As noted above, *Pickett et al.* does not expressly or inherently teach that the

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<sup>1</sup>Webopedia definition of map, attached as Exhibit A.

<sup>2</sup>See Exhibit A.

multiplexer provides management commands, as claimed by Applicant. Rather *Pickett et al.* teaches that the TDM bus and packet bus “are intelligently bridged and managed . . . with a single, integrated system. . . . The buffer/framer is coupled to the TDM bus by way of a switch/multiplexer, which includes the capability to intelligently map data traffic . . .” Abstract, lines 11-24. *Pickett et al.* teaches mapping and management of bus traffic. However, *Pickett et al.* does not teach a service processor to provide management commands to the partitions. At most, the multiplexer of *Pickett et al.* teaches intelligent mapping. “To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.”<sup>3</sup> As noted above, *Pickett et al.* ‘791 does not expressly or inherently teach a service processor that provides management commands to at least two partitions in a computer system. Accordingly, it is respectfully suggested that this rejection which does not contain the teachings of the claim elements, is without merit, and must be withdrawn.

Claim 15 depending upon independent claim 12, and claims 18 and 19 depending upon independent claim 16 also include the service processor as an element. Therefore, the Examiner’s rejection of these claims under 35 U.S.C. §103(a) should not be upheld. A dependent claim, because it depends from an independent claim is a further limitation of the independent claim.<sup>4</sup> If a limitation is not found in an independent claim, then it is not found in the dependent claims either. In the present case, the service processor is incorporated by reference into each dependent claim of the application. The analysis above shows that the *Pickett et al.* ‘791 does not anticipate the service processor of Applicant.

Accordingly, Applicant respectfully contends that the obviousness rejection of *Pickett et al.* ‘791 does not meet the standard set by the CAFC’s interpretation of 35 U.S.C. §103(a), and respectfully requests removal of the rejection of claims 12, 15, 16, 18, and 19 under 35 U.S.C. §103(a).

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<sup>3</sup> MPEP §2143.03, citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

<sup>4</sup> 37 C.F.R. 1.75

### **III. Rejection of Claims 3, 11, 21, and 22**

In the Office Action dated February 8, 2007, the Examiner assigned to the application rejected claims 3, 11, 21, and 22 under 35 U.S.C. §103(a) as being unpatentable over *Pickett et al.* '791 in view *Frye*, U.S. Patent Publication No. 2003/0097553.

Applicant's remarks to *Pickett et al.* '791 made above are hereby incorporated by reference, and Applicant's remarks to *Frye* '553 made in the prior Response are hereby incorporation by reference.

In the Office Action dated February 8, 2007, the Examiner did not differentiate this portion of Applicant's response from the prior elements in the Response.

It is Applicant's position that there is no motivation in the prior art references for combining *Pickett et al.* '791 and *Frye* '553. Rather, the motivation for such a combination stems from the language in Applicant's claims. As noted, *Pickett et al.* '791 is silent about a pre-boot mode of operation. There is no teaching or suggestion in *Pickett et al.* '791 to modify their invention to support the pre-boot mode of operation, and there is no support in the prior art to modify the combination of *Pickett et al.* '791 and *Frye* '553 to employ all three of these modes of operation. The only support for the alleged combination stems from Applicant.

Furthermore, neither *Pickett et al.* '791 or *Frye* '553 teach a service processor in a computing environment as claimed by Applicant. It is the management commands of Applicant's service processor that support the in-band, out-of-band, and pre-boot modes of operation. The suggested combination of *Pickett et al.* '791 with *Frye* '553 would require a substantial reconstruction and redesign of the computer implemented management commands not envisioned or contemplated by *Pickett et al.* '791. Accordingly, it is Applicant's position that there is no motivation present in *Pickett et al.* '791 to be modified in the manner as claimed by Applicant.

It is clear that the Examiner is taking the elements of Applicant's pending claims and

combining them in an improper manner. “It is impermissible to use the claimed invention as an instructions manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ 2d 1780 (Fed. Cir. 1992), citing *In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991). Yet that is the very process that the Examiner has attempted to undertake. Most patents may be considered combination patents in which different elements are combined from prior art to achieve a new and useful apparatus and/or method. Although Applicant’s invention may appear to combine elements found in different prior art disclosures, the motivation to combine the references must be in the prior art not in Applicant’s pending claims. There is no motivation in the prior art to combine the references. Accordingly, Applicant respectfully contends that the combination of *Pickett et al.* ‘791, and *Frye* ‘553 does not meet the standard set by the CAFC’s interpretation of 35 U.S.C. §103(a), and respectfully requests removal of the rejection of claims 3, 11, 21, and 22 under 35 U.S.C. §103(a).

#### **IV. Rejection of claims 10, 14, and 20**

In the Office Action dated February 8, 2007, the Examiner assigned to the application rejected claims 10, 14, and 20 under 35 U.S.C. §103(a) as being unpatentable over *Pickett et al.* ‘791 in view of *Zaudtke et al.*, U.S. Patent No. 6,654,816.

Applicant’s remarks to *Pickett et al.* ‘791 made above are hereby incorporated by reference, and Applicant’s remarks to *Zaudtke et al.* ‘553 made in the prior Response are hereby incorporation by reference.

As noted in the prior Response, it is Applicant’s position that there is no motivation in the prior art references for combining *Pickett et al.* ‘791 and *Zaudtke et al.* ‘816. Rather, the motivation for such a combination stems from the language in Applicant’s claims. Clearly, *Pickett et al.* ‘791 is silent about a UART communication channel. There is no teaching or suggestion in *Pickett et al.* ‘791 to modify their invention to support the UART communication channel. The only support for the alleged combination stems from Applicant.

“It is impermissible to use the claimed invention as an instructions manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ 2d 1780 (Fed. Cir. 1992), citing *In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991). Yet that is the very process that the Examiner has attempted to undertake, especially with the plurality of patents being used for the combination. Most patents may be considered combination patents in which different elements are combined from prior art to achieve a new and useful apparatus and/or method. Although Applicant’s invention may appear to combine elements found in different prior art disclosures, the motivation to combine the references must be in the prior art not in Applicant’s pending claims. There is no motivation in the prior art to combine the references. Accordingly, Applicant respectfully contends that the combination of *Pickett et al.* ‘791, and *Zaudtke et al.* ‘816 does not meet the standard set by the CAFC’s interpretation of 35 U.S.C. §103(a), and respectfully requests removal of the rejection of claims 10, 14, and 20 under 35 U.S.C. §103(a).

## **V. Conclusion**

There is no teaching individually in *Pickett et al.* ‘791, *Frye* ‘553, and/or *Zaudtke et al.* ‘816 for a computing environment that individually supports headless communication with a service processor, as claimed by Applicant. Nor is there a motivation to combine these multiple references to teach the elements in the dependent claims, as the only basis for such a motivation stems from Applicant.

It is well settled that each statement of obviousness for the purpose of combining each of the numerous references of record must be found and suggested in the references themselves and not only in the fertile mind of the Examiner. The conclusionary statements of the Examiner must be based upon specific evidence, suggestions and findings in the references of record relied upon by the Examiner in the rejection of the claimed subject matter. It is respectfully submitted that the record before us lacks any valid reasons to combine the references in the manner done so by the Examiner and contains unsupported reasoning suggested by the Examiner. If the Examiner intends to maintain the obviousness rejections, Applicant respectfully requests that the Examiner enter factual evidence into the record to support their position. It is respectfully suggested that

these obviousness rejections which contain neither teachings nor motivation to combine the references is without merit and must be withdrawn. Even the primary reference, *Pickett et al.* '791, does not teach or suggest the service processor of Applicant's claims. A service processor is not a multiplexer, and a multiplexer does not support the functionality of a service processor. Accordingly, Applicant respectfully request that the Examiner remove the rejection of claims 1-12, 14-16, and 18-22.

Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,

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## map

(n.) A file showing the structure of a program after it has been compiled. The map file lists every variable in the program along with its memory address. This information is useful for debugging purposes. Normally a compiler will not produce a map file unless you explicitly ask for it by specifying the appropriate compiler option.

(v.) (1) To make logical connections between two entities. Because programs cannot translate directly from human concepts to computer numbers, they translate incrementally through a series of layers. Each layer contains the same amount of information as the layer above but in a form somewhat closer to the form that the computer understands. This activity of translating from one layer to another is called mapping.

The term map is often used to describe programming languages. For example, C is an efficient programming language because it maps well onto the machine language. What this means is that

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it is relatively easy to translate from the C language to machine languages.

(2) To copy a set of objects from one place to another while preserving the objects' organization. For example, when loaded, programs on a disk are mapped into memory. Graphics images in memory are mapped onto a display screen.

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